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REMARKS

Claims 1-10 are pending.

Claims 8-10 have been cancelled herewith, without prejudice.

Applicant notes the Examiner's statement regarding reopening prosecution in the instant case in view of the Appeal Brief filed on November 4, 2005 and the conflicting claims in copending application 10/724,564. Applicant further notes the new grounds of rejection set forth in the instant Office Action. Applicant is exercising option 1 as delineated in said Office Action by filing a reply to the Office Action.

Claims 1-3 and 6 stand in conflict with Claims 11-13 of Application Serial No. 10/724,564. Applicant submits this objection has been rendered moot in light of the cancellation without prejudice of Claims 11-13 in Application Serial No. 10/724,564. Applicant requests withdrawal of this objection.

Claims 8-10 stand in conflict with Claims 23-31 of Application Serial No. 10/724,564. Applicant submits this objection has been rendered moot in light of the cancellation without prejudice of Claims 8-10 in the instant application. Applicant requests withdrawal of this objection.

The Examiner has further requested clarification regarding the timing of the invention of both the instant application and of Application Serial No. 10/724,564. Applicant notes that the second application (the '564 application) is a divisional of the instant case as indicated in the documents provided to the USPTO upon filing same. Both parent and divisional applications have the same inventor, the same assignee, and the same priority date.

Applicant notes with appreciation the withdrawal of the previous rejections: the rejection of Claims 1, 4, 5, 6, and 7 under 35 U.S.C. § 102(b) over Robbins (U.S. Patent 5,140,845); the rejection of Claim 2 under 35 U.S.C. § 103(a) over Robbins and U.S. Patent 5,913,588 to Legros *et al.*; the rejection of Claim 3 under 35 U.S.C. § 103(a) over Robbins and U.S. Patent 5,576,285 to France *et al.*; the rejection of Claims 8-10 under 35 U.S.C. § 103 over Robbins in view of U.S. Patent 4,930,906 to Hemphill; the rejection of Claims 1, 3, 4, and 6 under 35 U.S.C. § 103(a) over U.S. Patent 5,140,845 to Robbins in

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view of "Chemical Principals" to Masterton *et al.* and "Compilation of Air Pollutant Emission Factors, AP-42" to the Environmental Protection Agency (EPA); the rejection of Claim 2 under 35 U.S.C. § 103(a) over Robbins in view of the teachings of Masterton *et al.* and Method AP-42 as applied to claim 1 and further in view of U.S. Patent No. 5,809,664 to Legros *et al.*; the rejection of Claim 5 under 35 U.S.C. § 103(a) over Robbins in view of the teachings of Masterton *et al.* and Method AP-42 as applied to claim 1 and further in view of U.S. Patent No. 5,522,271 to Turiff *et al.* or Method 5035 to the EPA; the rejection of Claim 7 under 35 U.S.C. § 103(a) over Robbins in view of the teachings of Masterton *et al.* and Method AP-42 as applied to claim 1 and further in view of "Determination of Volatile Organic Solvents in Water by Headspace Sampling with the 8200 CX Autosampler" to Penton; the rejection of Claims 8-10 under 35 U.S.C. § 103(a) over Robbins in view of the teachings of Method AP-42, Method 5035, "Manual for the Certification of Laboratories Analyzing Drinking Water- EPA 815-B-97-001 to the EPA, and U.S. Patent No. 4,930,906 to Hemphill; in addition to the withdrawal of the previous objections to the specification.

Claims 8-10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 4,930,906 to Hemphill. Applicant respectfully submits this rejection has been rendered moot in light of the instant amendment, wherein Claims 8-10 have been cancelled without prejudice. Applicant requests withdrawal of the rejection.

Claims 1-7 now stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the applicant's admitted prior art in view of U.S. Patent No. 5,140,845 to Robbins., U.S. Patent No. 5,809,664 to Legros *et al.*, Chemical Principles to Masterton *et al.*, and "Compilation of Air Pollutant Emission Factors, AP-42" to the Environmental Protection Agency (EPA) (hereinafter "AP-42"). Applicant respectfully traverses the rejection and requests withdrawal of same.

Applicant's invention teaches a method for measuring volatile organic compounds (VOCs) of material produced in a process system having emissions. Examples of process systems in which this method may be utilized are provided in Applicant's specification at least on page 4, and include spray dryers, mixers, fluid bed

dryers and coolers, and storage tanks. All of these systems have dynamic air flow properties. Applicant maintains that Applicant's claims must be read in light of the specification.

Applicant notes that the "admitted prior art" employed by the Examiner in this rejection is in fact the "Background of the Invention" on page 1, paragraph 2, of Applicant's specification as filed. While discussing VOC emissions and monitoring same, the Background of the Invention clearly does not teach the method of Applicant's invention for measuring VOC in a process system having emissions.

Robbins teaches a method for measuring the volatile constituent of a **sample of ground water or soil mixed with ground water**. The method of Robbins requires agitation of the bag and contents to release the sample. Applicant's invention does not require agitation. Further, Robbins does not teach or suggest a method for measuring volatile organic compounds in a **process system having emissions**, as provided by way of Applicant's invention. Specifically, the leakage of underground storage tanks and the testing of the contaminated soil resulting therefrom as described in Robbins does not teach or suggest the measurement of VOCs in process systems having emissions of Applicant's invention. Robbins therefore does not support the obviousness rejection of Applicant's invention.

Legros *et al.* teach a drying system for a fluid bed dryer. Legros does not teach a method for measuring volatile organic compounds of material produced in a process system having emissions. Legros does not support the obviousness rejection of Applicant's invention.

"Chemical Principals" to Masterton, Slowinski, and Stanitski is a general chemistry text. As a **general chemistry text**, chemical equilibrium is certainly discussed. However, this textbook does not teach or suggest the method for measuring volatile organic compounds in a process system having emissions of Applicant's invention as claimed.

"Compilation of Air Pollutant Emission Factors, AP-42" to the Environmental Protection Agency (EPA) is a **general fact sheet** for the EPA on techniques used in

studying air pollution. This fact sheet does not teach or suggest the method for measuring volatile organic compounds in a process system having emissions of Applicant's invention as claimed.

There is no teaching or suggestion of a method for measuring volatile organic compounds (VOCs) of material produced in a process system having emissions as provided by way of Applicant's invention in any of these references. Specifically, Robbins or Legros fail to teach or suggest Applicant's invention at least for the reasons discussed above. Further, Applicant maintains that the addition of a general chemistry textbook and the generic EPA protocols discussing air pollution into the body of this rejection do not add additional support to the rejection. A *prima facie* case of obviousness has not been established.

Still further, there is no teaching or suggestion in any of these references to combine the references. Applicant maintains the Examiner has engaged in impermissible hindsight reconstruction of Applicant's invention. Effectively, the Examiner has used Applicant's invention as a shopping list in order to attempt to locate these various references in this attempt to negate the patentability of Applicant's invention as claimed. The Examiner has attempted to use these references to selectively support his position regarding the unpatentability of Applicant's invention. Applicant respectfully disagrees at least for the reasons provided hereinabove. Applicant respectfully requests withdrawal of the rejection.

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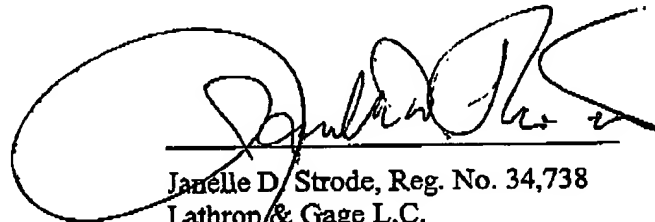
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Conclusion

Applicant respectfully requests withdrawal of the rejections of Claims 1-10. Should the Examiner believe that any issues remain outstanding, the Examiner is requested to call Applicant's undersigned attorney in an effort to resolve such issues and advance this application to issue.

Respectfully submitted,

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